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LIFESCAN, INC. and LIFESCAN SCOTLAND, LTD.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE**

LIFESCAN, INC. and LIFESCAN  
SCOTLAND, LTD.,

Plaintiffs,

v.

SHASTA TECHNOLOGIES, LLC, DECISION  
DIAGNOSTICS CORP., PHARMATECH  
SOLUTIONS, INC., and CONDUCTIVE  
TECHNOLOGIES, INC.,

Defendants.

Case No. CV11-04494-WHO  
**LIFESCAN'S ANSWER TO  
PHARMATECH SOLUTIONS, INC.  
AND DECISION DIAGNOSTICS  
CORP.'S AMENDED  
COUNTERCLAIMS**

1 LifeScan, Inc. and LifeScan Scotland, Ltd. (collectively, “LifeScan”) respectfully  
2 submit this response to PharmaTech Solutions, Inc. (“PharmaTech”) and Decision Diagnostics,  
3 Corp.’s (“DDC”) (collectively, “Defendants”) amended counterclaims. LifeScan denies each and  
4 every allegation in Defendants’ counterclaims that is not specifically admitted herein. LifeScan  
5 responds to the counterclaims as follows:

6 1. LifeScan lacks knowledge or information sufficient to form a belief as to the truth or  
7 falsity of the allegations in Paragraph 1, except admits that Defendant DDC was formerly known as  
8 InstaCare Corp.

9 2. LifeScan lacks knowledge or information sufficient to form a belief as to the truth or  
10 falsity of the allegations in Paragraph 2.

11 3. LifeScan denies the allegations of Paragraph 3, except admits that LifeScan, Inc. is a  
12 corporation organized under the laws of the State of California having its headquarters and principal  
13 place of business at 1000 Gibraltar Drive, Milipitas, California 95035, and refers to the Complaint in  
14 the separate false advertising action in the Northern District of California, *LifeScan, Inc. v. Shasta*  
15 *Technologies, LLC*, No. 12-CV-6360 (JST), D.E. 1 (the “Lanham Act Complaint”) cited in footnote 1  
16 to Paragraph 3, for its contents.

17 4. LifeScan admits the allegations of Paragraph 4.

18 5. LifeScan denies the allegations of Paragraph 5, except admits that LifeScan, Inc. is a  
19 subsidiary of Johnson & Johnson.

20 6. LifeScan denies the allegations of Paragraph 6, except admits that Defendants purport  
21 to assert counterclaims under Section 1 and 2 of the Sherman Act and Section 43(a) of the Lanham  
22 Act, and that the Court has jurisdiction over these counterclaims.

23 7. LifeScan denies the allegations of Paragraph 7, except admits that venue for  
24 Defendants’ counterclaims lies in the Northern District of California.

25 8. LifeScan denies the allegations of Paragraph 8.

26 9. LifeScan denies the allegations of Paragraph 9, except that it refers to the Lanham Act  
27 Complaint for its contents.

1           10.     LifeScan denies the allegations of Paragraph 10.

2           11.     LifeScan denies the allegations of Paragraph 11, except admits that Defendants have  
3 received FDA clearance to market the GenStrip, that the GenStrip competes with LifeScan's  
4 OneTouch Ultra test strips, and that Defendants purport to bring counterclaims under the antitrust  
5 laws.

6           12.     LifeScan denies the allegations of Paragraph 12.

7           13.     LifeScan denies the allegations of Paragraph 13, except that it refers to the Lanham  
8 Act Complaint for its contents.

9           14.     LifeScan denies the allegations of Paragraph 14.

10          15.     LifeScan denies the allegations of Paragraph 15.

11          16.     LifeScan denies the allegations of Paragraph 16, except that it refers to the Lanham  
12 Act Complaint for its contents.

13          17.     LifeScan denies the allegations of Paragraph 17.

14          18.     LifeScan denies the allegations of Paragraph 18, except that it refers to the Lanham  
15 Act Complaint for its contents.

16          19.     LifeScan denies the allegations of Paragraph 19.

17          20.     LifeScan denies the allegations of Paragraph 20, except admits that the FDA has stated  
18 that the GenStrip is "substantially equivalent . . . to legally marketed predicate devices."

19          21.     LifeScan denies the allegations of Paragraph 21.

20          22.     LifeScan denies the allegations of Paragraph 22.

21          23.     LifeScan denies the allegations of Paragraph 23.

22          24.     LifeScan denies the allegations of Paragraph 24, except that it refers to its Motion for a  
23 Preliminary Injunction, D.E. 176, for its contents.

24          25.     LifeScan denies the allegations of Paragraph 25, except that it lacks knowledge or  
25 information sufficient to form a belief as to the truth or falsity of the allegations concerning "one  
26 pharmaceutical executive," and admits that its revenues for blood glucose monitoring systems come  
27  
28

1 primarily from sales of its proprietary test strips and that many consumers receive blood glucose  
2 meters for free or below cost.

3 26. LifeScan denies the allegations of Paragraph 26.

4 27. Paragraph 27 asserts legal conclusions to which no response is required.

5 28. Paragraph 28 asserts legal conclusions to which no response is required.

6 29. LifeScan denies the allegations of Paragraph 29.

7 30. LifeScan denies the allegations of Paragraph 30, except states that Paragraph 30 asserts  
8 legal conclusions to which no response is required.

9 31. LifeScan denies the allegations of Paragraph 31.

10 32. LifeScan denies the allegations of Paragraph 32, except admits that at least some  
11 packages for its OneTouch blood glucose meters include the following language: "Use of the  
12 monitoring device included here is protected under one or more of the following U.S. patents: . . .  
13 7,250,105 . . . Purchase of this device does not grant a use license under these patents. Such a license  
14 is granted only when the device is used with OneTouch® Ultra® test strips."

15 33. LifeScan denies the allegations of Paragraph 33.

16 34. LifeScan denies the allegations of Paragraph 34, except states that Paragraph 34 asserts  
17 legal conclusions as to which no response is required.

18 35. LifeScan denies the allegations of Paragraph 35, except states that Paragraph 35 asserts  
19 legal conclusions to which no response is required.

20 36. LifeScan denies the allegations of Paragraph 36.

21 37. LifeScan denies the allegations of Paragraph 37.

22 38. LifeScan denies the allegations of Paragraph 38, except admits that the First Amended  
23 Complaint, alleges, *inter alia*, that the GenStrip directly infringes U.S. Patent Nos. 5,708,247 (the  
24 "'247 Patent'"), and 6,241,862 (the "'862 Patent'") and admits that the '247 and '862 Patents are  
25 directed, *inter alia*, to the composition of the test strip.

26 39. LifeScan denies the allegations of Paragraph 39.

1           40.     LifeScan denies the allegations of Paragraph 40, except that it refers to its Complaint,  
2 D.E. 1, for its contents.

3           41.     LifeScan denies the allegations of Paragraph 41.

4           42.     LifeScan denies the allegations of Paragraph 42, except that it refers to the Lanham Act  
5 Complaint for its contents.

6           43.     LifeScan denies the allegations of Paragraph 43, except admits that at least some  
7 packages for the GenStrip include a disclaimer.

8           44.     LifeScan denies the allegations of Paragraph 44.

9           45.     LifeScan denies the allegations of Paragraph 45.

10          46.     LifeScan denies the allegations of Paragraph 46, except admits that it advertises its  
11 DoubleSure technology.

12          47.     LifeScan denies the allegations of Paragraph 47, except admits that the GenStrip  
13 competes with LifeScan's OneTouch Ultra test strips.

14          48.     LifeScan denies the allegations of Paragraph 48.

15          49.     LifeScan denies the allegations of Paragraph 49, except admits that LifeScan has  
16 advertised OneTouch Ultra test strips' DoubleSure technology, and refers to the advertisement cited  
17 in Paragraph 49 of Defendants' counterclaims for its contents.

18          50.     LifeScan denies the allegations of Paragraph 50, refers to the advertisement cited in  
19 Paragraph 49 of Defendants' counterclaims for its contents, and refers to the complete version of the  
20 advertisement excerpted in Paragraph 50 of Defendants' counterclaims for its contents. A complete  
21 version of the advertisement excerpted in Paragraph 50 is attached hereto as Exhibit A.

22          51.     LifeScan denies the allegations of Paragraph 51.

23          52.     LifeScan denies the allegations of Paragraph 52.

24          53.     LifeScan denies the allegations of Paragraph 53.

25          54.     LifeScan denies the allegations of Paragraph 54.

**DEFENDANTS' FIRST COUNTERCLAIM**

55. LifeScan repeats and re-alleges its responses to Paragraphs 1 through 54 as if set forth here in full.

56. Paragraph 56 asserts a legal conclusion to which no response is required.

57. LifeScan denies the allegations of Paragraph 57.

58. LifeScan denies the allegations of Paragraph 58.

59. LifeScan denies the allegations of Paragraph 59.

60. LifeScan denies the allegations of Paragraph 60.

61. LifeScan denies the allegations of Paragraph 61.

**DEFENDANTS' SECOND COUNTERCLAIM**

62. LifeScan repeats and re-alleges its responses to Paragraphs 1 through 61 as if set forth here in full.

63. Paragraph 63 asserts a legal conclusion to which no response is required.

64. LifeScan denies the allegations of Paragraph 64.

65. LifeScan denies the allegations of Paragraph 65, except states that Paragraph 65 asserts a legal conclusion to which no response is required.

66. LifeScan denies the allegations of Paragraph 66.

67. LifeScan denies the allegations of Paragraph 67.

68. LifeScan denies the allegations of Paragraph 68.

69. LifeScan denies the allegations of Paragraph 69.

**DEFENDANTS' THIRD COUNTERCLAIM**

70. LifeScan repeats and re-alleges its responses to Paragraphs 1 through 69 as if set forth here in full.

71. LifeScan denies the allegations of Paragraph 71.

72. LifeScan denies the allegations of Paragraph 72.

73. LifeScan denies the allegations of Paragraph 73.

74. LifeScan denies the allegations of Paragraph 74.

1 75. LifeScan denies the allegations of Paragraph 75.

2 76. LifeScan denies the allegations of Paragraph 76.

3 **DEFENDANTS' FOURTH COUNTERCLAIM**

4 77. LifeScan repeats and re-alleges its responses to Paragraphs 1 through 76 as if set  
5 forth here in full.

6 78. LifeScan denies the allegations of Paragraph 78.

7 79. LifeScan denies the allegations of Paragraph 79.

8 80. LifeScan denies the allegations of Paragraph 80.

9 81. LifeScan denies the allegations of Paragraph 81.

10 82. LifeScan denies the allegations of Paragraph 82.

11 83. LifeScan denies the allegations of Paragraph 83.

12 **DEFENDANTS' FIFTH COUNTERCLAIM**

13 84. LifeScan repeats and re-alleges its responses to Paragraphs 1 through 83 as if set  
14 forth here in full.

15 85. LifeScan denies the allegations of Paragraph 85.

16 86. LifeScan denies the allegations of Paragraph 86.

17 87. LifeScan denies the allegations of Paragraph 87.

18 88. LifeScan denies the allegations of Paragraph 88.

19 89. LifeScan denies the allegations of Paragraph 89.

20 **DEFENDANTS' SIXTH COUNTERCLAIM**

21 90. LifeScan repeats and re-alleges its responses to Paragraphs 1 through 89 as if set  
22 forth here in full.

23 91. LifeScan denies the allegations of Paragraph 91.

24 92. LifeScan denies the allegations of Paragraph 92.

25 93. LifeScan denies the allegations of Paragraph 93.

26 94. LifeScan denies the allegations of Paragraph 94.

27 95. LifeScan denies the allegations of Paragraph 95.





**NINTH ADDITIONAL DEFENSE**

105. Defendants' claims are barred, in whole or in part, because its alleged damages, if any, are speculative.

**TENTH ADDITIONAL DEFENSE**

106. LifeScan does not maintain monopoly power in any relevant market.

**ELEVENTH ADDITIONAL DEFENSE**

107. Defendants' claims are barred, in whole or in part, under the doctrine of laches.

**TWELFTH ADDITIONAL DEFENSE**

108. Defendants' claims are barred, in whole or in part, by the applicable statutes of limitations.

**THIRTEENTH ADDITIONAL DEFENSE**

109. To the extent the counterclaims seeks equitable relief, Defendants are not entitled to such relief because there is an adequate remedy at law.

**FOURTEENTH ADDITIONAL DEFENSE**

110. Defendants' claims are barred, in whole or in part, because certain of the allegedly deceptive statements were such that no reasonable person could have reasonably relied upon or misunderstood them as claims of fact.

**FIFTEENTH ADDITIONAL DEFENSE**

111. Defendants' claims are barred, in whole or in part, because Defendants have no facts to prove the requisite oppression, fraud, or malice required for an award of punitive or exemplary damages.

**SIXTEENTH ADDITIONAL DEFENSE**

112. Defendants' claims are barred, in whole or in part, because any award of punitive or exemplary damages would violate the due process and/or equal protection clauses of the California and United States constitutions.

**SEVENTEENTH ADDITIONAL DEFENSE**

113. Defendants' claims are barred, in whole or in part, by the doctrine of unclean hands.

**EIGHTEENTH ADDITIONAL DEFENSE**

114. Defendants' claims are barred, in whole or in part, by the First Amendment of the United States Constitution.

**NINETEENTH ADDITIONAL DEFENSE**

115. Defendants' claims are barred, in whole or in part, because LifeScan did not publish or authorize the advertisements challenged in the counterclaims.

**OTHER ADDITIONAL DEFENSES**

116. LifeScan reserves the right to add to its additional defenses as additional information becomes available in the course of this litigation.

**DEMAND FOR JURY TRIAL**

117. LifeScan hereby demands a trial by jury on all issues triable by a jury relating to Defendants' claims.

*/s/ Gregory L. Diskant*  
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